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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

ANDRE L. REVIS,

Plaintiff and Appellant,

v.

S. JOHNSON et al.,

Defendants and Respondents.

F077207

(Super. Ct. No. 13C0128)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kings County. Valerie R. Chrissakis, Judge.

Andre L. Revis, in pro. per., for Plaintiff and Appellant.

Xavier Becerra, Attorney General, Monica N. Anderson, Assistant Attorney General, Misha D. Igra and Sarah M. Brattin, Deputy Attorneys General, for Defendants and Respondents.

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This action was commenced in state court in April 2013 and was removed to federal court in July 2013. The federal district court dismissed the action without leave to

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\* Before Detjen, Acting P.J., Franson, J. and Peña, J.

amend and entered a judgment in September 2014. The federal district court never remanded the case (or any claims) to the state court. In February 2018, the state court entered a judgment of dismissal, concluding it lacked jurisdiction for further proceedings. Plaintiff, an inmate proceeding in propria persona, appealed.

The federal removal statute provides that, after a lawsuit has been removed to federal court, “the State court shall proceed no further unless and until the case is remanded.” (28 U.S.C. § 1446(d).) Thus, “after removal, the jurisdiction of the state court absolutely ceases and the state court has a duty not to proceed any further in the case.” (*Maseda v. Honda Motor Co., Ltd.* (11th Cir. 1988) 861 F.2d 1248, 1254.) When there has been no remand, subsequent proceedings in state court on the case are void and have no legal effect. (*Ibid.*)

Here, the superior court had jurisdiction (i.e., the authority) to determine whether it had jurisdiction to proceed. Under the legal principles governing removal, the court correctly determined it lacked subject matter jurisdiction. Accordingly, the judgment of dismissal based on the lack of jurisdiction is not the product of reversible error.

We therefore affirm the judgment of dismissal.

## **FACTS**

Plaintiff Andre Revis is an inmate of the California Department of Corrections and Rehabilitation (CDCR) housed in the California Substance Abuse Treatment Facility at the state prison in Corcoran. In 2011, Revis was required to get rid of excess personal property. He chose to have some photographs returned to his family. He had sufficient funds in his prison trust account to have the photographs delivered by Federal Express and he completed the prison forms authorizing the shipment and payment. When his family did not receive the photographs, Revis requested information from prison officials and filed an inmate grievance stating he wished to have the property returned to him or be compensated for the loss.

The difficulties Revis had in getting information and in having his grievances processed through the three levels of administrative review are relevant to the merits of his constitutional claims relating to due process and retaliation, but are not relevant to the jurisdictional issue presented in this appeal. Accordingly, we do not describe those difficulties in detail. The gist of the CDCR's position is that it properly handled the photographs and delivered them to Federal Express, at which point CDCR's responsibilities ended and Federal Express's responsibility began. A representative of Federal Express informed a prison official that the package had been delivered to the address in Inglewood provided by Revis and left on the front door at 7:32 p.m. on Monday, August 22, 2011. CDCR denied liability for any loss and suggested Revis could write Federal Express and submit a claim if he believed his property was not delivered.

### **PROCEEDINGS**

In April 2013, Revis filed a 12-page handwritten complaint with the Kings County Superior Court. He labeled the document "Civil Rights Act: Complaint/Tort Claim Act: Complaint." He alleged the court had jurisdiction pursuant to section 1983 of title 42 of the United States Code and sections 410.10, 1060 and 1062 of the Code of Civil Procedure.

Revis named as defendants the chief deputy warden of operations, a correctional sergeant, two correctional counselor II's, and two staff service analysts. Revis sought (1) compensatory damages; (2) damages for intentional infliction of emotional distress; (3) a judgment declaring defendants had denied his administrative rights under the California Code of Regulations as guaranteed by the Eighth and Fourteenth Amendments of the United States Constitution; and (4) costs, prejudgment interest, and attorney fees. The heading to his cause of action referred to professional negligence, deliberate indifference and violations of due process and civil liberties. Revis's allegations described various

ways in which his inmate grievances using CDCR form 602 were mishandled by defendants.<sup>1</sup>

In June 2013, defendants were served with the summons and complaint. In July 2013, defendants removed the action from state court to the United States District Court for the Eastern District of California. The defendants also filed a request for screening with the district court, asking for the dismissal of the complaint if it failed to state a claim upon which relief could be granted. (28 U.S.C. § 1915A [screening prisoner complaints for cognizable claims].)

Defendants' request for screening summarized Revis's claims by stating he alleged "his Eighth and Fourteenth Amendment rights were violated when his personal property was lost after it was [sent] home to his family through Federal Express. The complaint also alleges a negligence claim arising under California state law." The request asserted the action was a civil rights action over which the district court had original jurisdiction (28 U.S.C. § 1331) and, in addition, the district court had supplemental jurisdiction over the state law claim because it arose from the same operative facts as Revis's federal claims (28 U.S.C. § 1367).

The district court reviewed Revis's complaint, dismissed it for failure to state a claim under section 1983 of title 42 of the United States Code, and granted Revis 30 days to file an amended complaint. Revis filed an amended complaint.

In August 2014, a magistrate recommended the amended complaint be dismissed for failing to state a claim upon which relief may be granted under section 1983 of title 42 of the United States Code. Revis filed timely objections to the recommendation. The

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<sup>1</sup> Inmate grievances and the three levels of administrative review applied to such grievances are discussed by this court in *Villery v. Dept. of Corrections & Rehabilitation* (2016) 246 Cal.App.4th 407 and *Menefield v. Foreman* (2014) 231 Cal.App.4th 211. The time limits for the three levels of administrative review conducted by CDCR officials are set forth in section 3084.8 of title 15 of the California Code of Regulations.

district court conducted a de novo review of the case and found the recommendation was supported by the record and by proper analysis. In September 2014, the district court entered the following order:

“1. The Findings and Recommendations, filed August 13, 2014, are ADOPTED in full;

“2. This action is DISMISSED for failure to state a claim under section 1983.

“This terminates this action in its entirety.”

The clerk of the district court entered a judgment in accordance with the order. The judgment was a final decision for purposes of 28 United States Code section 1291, which provides that the United States Court of Appeal shall have jurisdiction from all final decisions of the district courts. Under Federal Rules of Appellate Procedure Rule 4(a)(1)(A), the time for filing a notice of appeal in a civil case is 30 days after entry of the judgment. Here, nothing in the clerk’s transcript shows Revis appealed the judgment entered by the district court.<sup>2</sup>

On June 12, 2014, while the case was still pending in federal court, the superior court held a case management conference. The docket entry for the conference states there was a discussion among the court, Revis and counsel for defendants about the removal of the case to federal court. The superior court continued the matter for a year and three days. Subsequently, the court continued the case management conference to September 2015, September 2016, and March 2017. In March 2017, the superior court issued an order to show cause regarding sanctions. No parties appeared at the April 2017

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<sup>2</sup> However, documents attached to Revis’s appellant’s reply brief show (1) he filed a notice of appeal in the federal district court matter in March 2018 and (2) his appeal was dismissed by the Ninth Circuit of the United States Court of Appeals for lack of jurisdiction.

hearing on the order to show cause. The court dissolved the order, issued a new order to show cause set for June 14, 2017, and authorized CourtCall appearances.

In September 2017, Revis filed a motion for default judgment in the superior court. Revis asserted defendants had continuously used arbitrary and capricious methods to deny him access to the court, including ignoring court orders allowing him telephone access for court appearances and using custodial personnel to remove legal documents from his prison cell without a sufficient penological reason.

On November 13, 2017, the superior court issued an order to show cause why sanctions should not be imposed on both Revis and the deputy attorney general of record for failing to appear at a case management conference held earlier that day. A month later, another deputy attorney general filed a notice stating the representation of the defendants has been reassigned to her. She also filed a case management statement indicating (1) she would appear at the January 17, 2018, conference by telephone, (2) after removal, the federal court had dismissed the case in its entirety and entered judgment, and (3) in his complaint, Revis “cites negligence in his claim one heading, but does not allege facts to support his claim.” Her written response to the order to show cause asserted no sanctions should be imposed because (1) the matter had been removed to federal court and then dismissed by the federal court in its entirety and (2) the new defense counsel that appeared in the federal matter to monitor if an appeal was taken had not been served with the notices about case management conferences in the superior court. The response asked the superior court to discharge the order to show cause and close its case file. Defendants supported the response to the order to show cause by filing a request for judicial notice of various documents filed in the federal court action.

On January 8, 2018, Revis filed a response to defendants’ request for judicial notice and argued sanctions should be imposed against defendants for failing to comply with court rules and failing to participate in the conferences scheduled by the court. At the January 17, 2018, case management conference, the superior court directed defense

counsel to prepare a proposed judgment of dismissal stating the court lacked jurisdiction over the matter because of the federal proceedings. In accordance with those instructions, defense counsel prepared a proposed judgment of dismissal and provided a copy to Revis for his comments and approval. Revis acknowledged receipt of the proposed judgment.

On February 6, 2018, the superior court signed and filed the judgment of dismissal, which described the removal to federal court and the judgment entered there. The judgment stated: “This court lacks jurisdiction over this case as it has already been dismissed in full. [¶] IT IS ORDERED AND ADJUDGED that this action be and hereby is dismissed and the case file is closed.” Notice of entry of the judgment was filed later that month. In March 2018, Revis appealed.

## **DISCUSSION**

### **I. LEGAL PRINCIPLES**

#### **A. Standard of Review**

When a superior court’s ruling decides legal issues, such as jurisdictional questions and matters of statutory interpretation, the appellate court conducts an independent review of the superior court’s legal conclusions. (*People v. International Fidelity Ins. Co.* (2012) 204 Cal.App.4th 588, 592.) Here, the superior court decided it lacked subject matter jurisdiction and the facts upon which its decision was based are undisputed. Therefore, we independently review the decision of the superior court.

#### **B. Removal and Its Effect on State Court Jurisdiction**

The removal of state court actions to federal court is governed by federal statute. The filing of a copy of the notice of removal of a civil action with the clerk of the state court where the action is pending “shall effect removal and the State court shall proceed no further unless and until the case is remanded.” (28 U.S.C. § 1446(d).) This statutory language is clear—the state court loses jurisdiction upon the filing of the notice of

removal. (*Resolution Trust Corp. v. Bayside Developers* (9th Cir. 1994) 43 F.3d 1230, 1238.) In other words, “after removal, the jurisdiction of the state court absolutely ceases and the state court has a duty not to proceed any further in the case.” (*Maseda v. Honda Motor Co., Ltd., supra*, 861 F.2d at p. 1254.)

The loss of jurisdiction means that any subsequent proceedings in the state court on the case are generally void *ab initio*. (*Maseda v. Honda Motor Co., Ltd., supra*, 861 F.2d at p. 1254; *Vigil v. Mora Independent Schools* (D.N.M. 2012) 841 F.Supp.2d 1238, 1240-1241.) The foregoing principles were applied by the First District in a case that had been removed to federal court and dismissed by the federal court without prejudice and without a remand to the state court. (*Allstate Ins. Co. v. Superior Court* (1982) 132 Cal.App.3d 670, 675-676.) The First District stated: “There having been a dismissal without remand, there was no *action* in which respondent court could ‘resume’ jurisdiction as plaintiff contends. That court consequently erred, and exceeded its jurisdiction, in permitting further proceedings in [the state court] action ... after the federal court had dismissed [the] action [before it].” (*Id.* at p. 676.)

## II. APPLICATION OF LEGAL PRINCIPLES

### A. Lack of Jurisdiction

The facts material to determining whether the superior court had the subject matter jurisdiction necessary to proceed with this lawsuit are as follows. First, this matter was removed to the federal district court in July 2013. Second, the federal district court dismissed the action and entered a judgment in September 2014. Third, the federal district court did not remand the case (or any claim) to the superior court. Under these facts and the principles stated earlier, we conclude the superior court correctly decided it lacked jurisdiction.



B. Revis's Claims of Error

Revis's opening appellant's brief focused primarily on the merits of his claims that defendants violated his constitutional rights in handling his personal property and in processing his subsequent administrative grievances. That brief did not address the lack of jurisdiction or the federal removal statute. In contrast, Revis's reply brief presents arguments that he contends demonstrate this court should not affirm the judgment in favor of the defendants.

First, Revis contends he never knew the federal district court dismissed his case in its entirety because he never received any notice or other document informing him of the status of the matter. The absence of notice of the federal district court's order dismissing the action and of the related judgment would not operate to restore subject matter jurisdiction to the state court. Revis has cited, and this court has located, no authority supporting the argument that the lack of notice to him or to the superior court could somehow restore the superior court's jurisdiction over the matter. (See 28 U.S.C. § 1446(d).) Therefore, this argument does not establish the trial court erred in deciding it lacked jurisdiction.

Second, Revis contends his original complaint raised constitutional claims and a state law negligence claim. He notes defense counsel acknowledged that he raised a state law negligence claim<sup>3</sup> and that claim should have been remanded back to the state court for review or, alternatively, should have been heard on the merits in the federal district court. He describes defense counsel's removal of the case to federal court to obtain a dismissal of the case in its entirety without a remand of the state law claim as a "tactic." Even if we assume the federal district court committed error in failing to remand the state law claim to the superior court, this error would not restore jurisdiction to the superior

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<sup>3</sup> The notice of removal and request for screening order filed by defense counsel on July 30, 2013, stated: "The complaint also alleges a negligence claim arising under California state law."

court. Neither the superior court nor this court has the authority to remedy that type of error and we have located no authority stating such an error would restore jurisdiction over the state law claims to the superior court. The remedy for an error by the federal district court is an appeal to the Ninth Circuit.

Third, Revis argues that after the removal to federal district court his complaint reemerged back in superior court as a result of that court's orders to show cause. Decisive law establishes that the proceedings involving the orders to show cause were void because the court lacked jurisdiction when those orders were made. (See pt. I.B., *ante*.) Furthermore, the federal statute does not authorize state courts to restore their own jurisdiction—that can only happen when a remand is ordered by the federal court. (28 U.S.C. § 1446(d).)

In summary, we conclude the arguments raised by Revis in this appeal do not demonstrate the trial court erroneously concluded it lacked jurisdiction in the matter.

#### **DISPOSITION**

The judgment of dismissal is affirmed. The parties shall bear their own costs on appeal.